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12 ENTERTAINMENT PROPERTIES, LLC

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15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

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18 AMERICAN CASINO & ENTERTAINMENT
19 PROPERTIES, LLC, a Delaware limited liability
20 company,

21 **COMPLAINT**

22 Plaintiff,

23 v.

24 MARCHEX SALES, INC., a Delaware
25 corporation,

26 Defendant.

27
28 For its complaint, AMERICAN CASINO & ENTERTAINMENT PROPERTIES, LLC
("ACEP") alleges the following:

29 **NATURE OF THE CASE**

30 This is an action for cybersquatting under the Anti-Cybersquatting Consumer Protection
31 Act, 15 U.S.C. § 1125(d) (the "ACPA"), and for trademark infringement under the Lanham Act,
32 15 U.S.C. § 1114(a), brought by ACEP, the owner of the ACEPLAY trademark. This action is
33 brought against Defendant Marchex Sales, Inc. ("Defendant"), who is the registered owner and
34 operator of the website located at <aceplay.com>. ACEP seeks damages, attorneys' fees, costs,
35 and temporary, preliminary and permanent injunctive relief.

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37 //

JURISDICTION AND VENUE

2 1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.
3 §§ 1331 and 1338(a) because Plaintiff's causes of action arise under the laws of the United
4 States, specifically, under the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. §
5 1125(d) and the Lanham Act, 15 U.S.C. § 1114.

6 2. This Court has personal jurisdiction over Defendant resides and conducts business
7 in Nevada.

8 3. Venue is proper in the United States District Court for the District of Nevada
9 under 28 U.S.C. § 1391(b), (c), and/or (d). Venue is proper in the unofficial Southern division of
10 this Court.

PARTIES

12 4. Plaintiff ACEP is a Delaware limited liability company with its principal place of
13 business in Las Vegas, Nevada.

14 5. Upon information and belief, Defendant is a Delaware corporation with its
15 principal place of business in Las Vegas, Nevada. Defendant is the registered owner of the
16 <aceplay.com> domain name, which is registered with eNom, Inc. (“eNom”).

ALLEGATIONS COMMON TO ALL COUNTS

18 6. ACEP is the holding company for entities that own and operate four (4) hotel
19 casino properties: (1) the Stratosphere tower, hotel and casino; (2) Aquarius hotel and casino; (3)
20 Arizona Charlie's Decatur hotel and casino; and (4) Arizona Charlie's Boulder hotel and casino.
21 Aquarius is located in Laughlin, Nevada. The other properties are located in Las Vegas, Nevada.

7. Many casinos and hotels have loyalty or reward clubs or programs in which actual or potential customers can enroll to receive special benefits, including discounts, complimentary products and services, special offers, and other rewards. These benefits are often tied to the amount that the customer spends at the casinos and hotels that participate in the programs.

26 8. In 2009, ACEP decided to expand and rebrand its players rewards club. ACEP
27 decided to call its players club by the name ACEPLAY.

28 9. In September 2009, ACEP relaunched its players club as ACEPLAY. ACEP

1 launched a web site at <aceplayinfo.com> through which consumers could obtain information
 2 about the club, including the levels of benefits available and current ACEPLAY members could
 3 create a login to review the information in their accounts.

4 10. In addition to the use on the website at <aceplayinfo.com>, ACEP is using the
 5 ACEPLAY mark in connection with registering players for the ACEPLAY program, issuing
 6 ACEPLAY rewards cards to players, advertising and marketing the ACEPLAY program through
 7 multiple means, and administering the ACEPLAY program with players, including providing
 8 program benefits.

9 11. ACEP has filed five United States trademark applications for the ACEPLAY
 10 mark, two of which have matured into registrations:

11 a. On September 15, 2009, ACEP filed an intent-to-use U.S. trademark
 12 application serial No. 77/826,850 for the ACEPLAY word mark in International Class 16 in
 13 connection with “Printed matter, namely, brochures, catalogs, newsletters, and magazines in the
 14 field of customer incentive programs, casino and gaming services, special events featuring casino
 15 and gaming contests and tournaments, online computer games, sweepstakes and entertainment
 16 and education exhibitions; printed application forms; printed identification cards for use in
 17 customer loyalty programs; coupons and coupon books.”

18 b. On September 15, 2009, ACEP filed an intent-to-use U.S. trademark
 19 application serial No. 77/826,927 for the ACEPLAY word mark in International Class 35 in
 20 connection with “Administration of an incentive reward program enabling participants to obtain
 21 discounts and complimentary awards on goods and services through membership; and retail gift
 22 shop.”

23 c. On September 15, 2009, ACEP filed an intent-to-use U.S. trademark
 24 application serial No. 77/826,941 for the ACEPLAY word mark in International Class 41 in
 25 connection with “Casino and gaming services featuring a frequent customer reward program
 26 service which allows participants to earn discounts, free gifts and complementary admission to
 27 entertainment and educational events; entertainment services, namely, conducting special events
 28 featuring casino and gaming contests and tournaments, online computer games and

1 sweepstakes.”

2 d. On October 20, 2009, ACEP filed a use-based U.S. trademark application
 3 serial No. 77/853,232 for the ACE PLAY design mark in International Class 35 in connection
 4 with “Administration of an incentive reward program enabling participants to obtain discounts
 5 and complimentary awards on goods and services through membership; and retail gift shop, and
 6 not in the fields of physical fitness training and education services with the foregoing limitation
 7 not to apply to discounts and complimentary awards and retail gift shop services offered at a
 8 hotel casino spa or hotel casino health club.” The application cited a date of first use in
 9 commerce of September 2009. The application matured into a U.S. trademark registration No.
 10 3,824,189 on July 27, 2010.

11 e. On October 20, 2009, ACEP filed a use-based U.S. trademark application
 12 serial No. 77/853,236 for the ACE PLAY design mark in International Class 41 in connection
 13 with “Casino and gaming services featuring a frequent customer reward program service which
 14 allows participants to earn discounts, free gifts and complementary admission to entertainment
 15 and educational events; entertainment services, namely, conducting special events featuring
 16 casino and gaming contests and tournaments, online computer games and sweepstakes.” The
 17 application cited a date of first use in commerce of September 2009. The application matured
 18 into a U.S. trademark registration No. 3,859,348 on July 27, 2010.

19 f. The foregoing are referred to herein as the “ACEPLAY Marks,” which
 20 have not been abandoned, cancelled, or revoked.

21 12. ACEP uses the ACEPLAY Marks in commerce in connection with advertising
 22 and promoting its properties in the United States and around the world and to provide, among
 23 other goods and services, casino services to Nevada residents and to the millions of people who
 24 visit Las Vegas, Nevada annually.

25 13. Based on its federal registrations and extensive use, ACEP owns the exclusive
 26 right to use the ACEPLAY Marks in connection with hotel, casino and related services and
 27 goods in the United States.

28 14. Defendant is using the <aceplay.com> domain name to display the webpage

1 shown in Figure 1 below. The webpage contains links to online gaming sites and links to
 2 ACEP's properties, including the Stratosphere, Arizona Charlie's and Aquarius. Upon
 3 information and belief, Defendant receives advertising or "click-through" revenue from the
 4 operators of these online casinos when visitors to the <aceplay.com> website click on one of the
 5 links on the page.

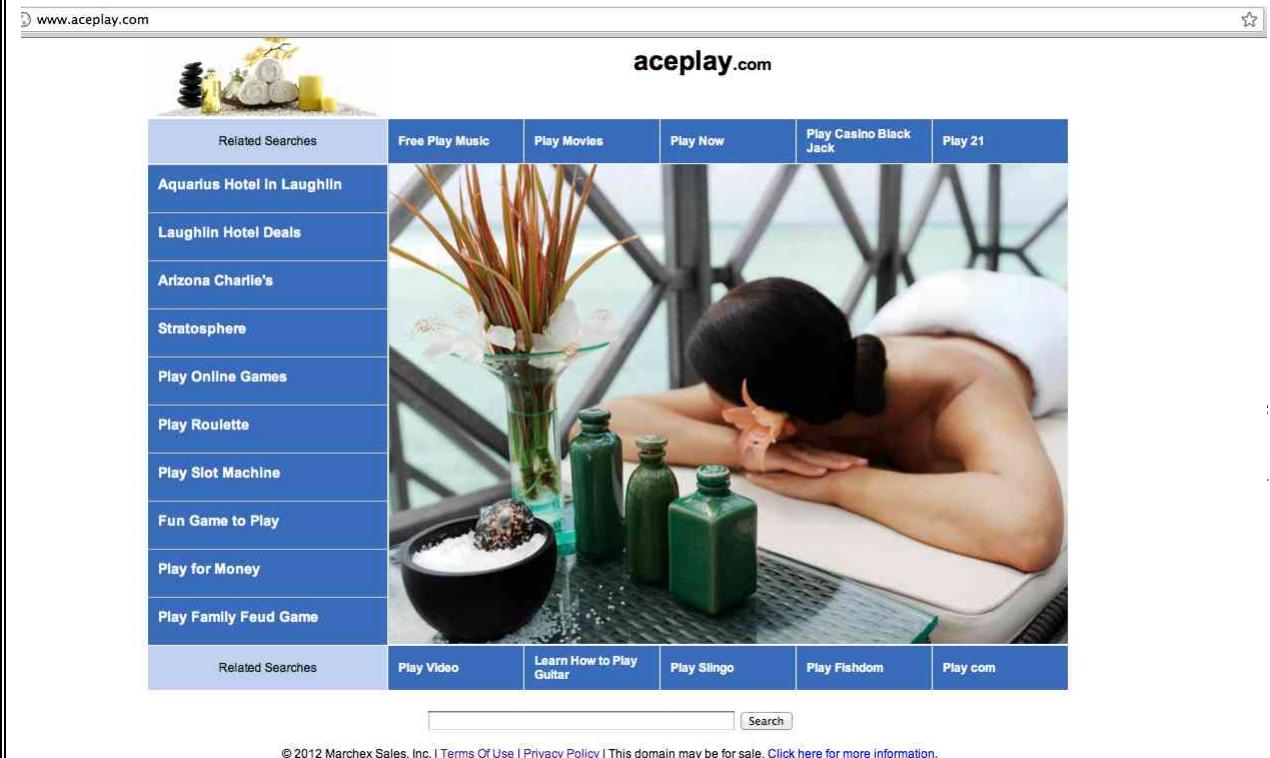


Figure 1

15. The website indicates that the <aceplay.com> domain name "may be for sale."

20 **COUNT I**
 21 (Cybersquatting under
 the Lanham Act, 15 U.S.C. § 1125(d))

22. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set
 23 forth herein.

24. The Defendant has registered, trafficked in, and/or used the <aceplay.com>
 25 domain name.

26. The <aceplay.com> domain name is confusingly similar to the ACEPLAY
 27 Marks.

28. The ACEPLAY Marks are inherently distinctive.

1 20. Upon information and belief, by using the <aceplay.com> domain name in
2 connection with links to ACEP's properties, online gaming websites, and other third party
3 services, the Defendant has a bad faith intent to profit from its use of the <aceplay.com> domain
4 name.

5 21. As a direct and proximate result of the Defendant's use of the <aceplay.com>
6 domain name, Plaintiff has suffered, and will continue to suffer, monetary loss and irreparable
7 injury to its business, reputation, and goodwill.

COUNT II

(Trademark Infringement under
the Lanham Act, 15 U.S.C. § 1114(a))

10 22. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set
11 forth herein.

12 23. Defendant's use of the <aceplay.com> domain name constitutes a reproduction,
13 copying, counterfeiting, and colorable imitation of the ACEPLAY Marks in a manner that is
14 likely to cause confusion or mistake or is likely to deceive consumers.

15 24. Plaintiff has not authorized or otherwise consented to Defendant's use of the
16 ACEPLAY Marks within the <aceplay.com> domain name or on the website located at
17 <aceplay.com>.

18 25. Defendant's unauthorized use of the ACEPLAY Marks is likely to cause initial
19 interest confusion by diverting Internet users away from Plaintiff's websites to Defendant's
20 <aceplay.com> website.

21 26. As a direct and proximate result of Defendant's infringement of the ACEPLAY
22 Marks, Plaintiff has suffered, and will continue to suffer, monetary loss and irreparable injury to
23 its business, reputation, and goodwill.

PRAYER FOR RELIEF

25 WHEREFORE, Plaintiff respectfully prays that the Court grant the following relief:

26 A. A temporary, preliminary, and permanent injunction prohibiting the Defendant
27 and its respective officers, agents, servants, employees, and/or all other persons acting in concert
28 or participation with them, from: (1) trafficking in, or maintaining a registration for, any Internet

1 domain name containing the ACEPLAY Marks or any confusingly similar variations thereof,
2 alone or in combination with any other letters, words, letter strings, phrases or designs; and (2)
3 using the ACEPLAY Marks or any confusingly similar variations thereof, alone or in
4 combination with any other letters, words, letter string, phrases or designs in commerce
5 (including, but not limited to, on websites, in domain names, in social network user names, in
6 hidden website text or in metatags);

7 B. A temporary, preliminary, and permanent injunction requiring the current domain
8 name registrar to transfer the registration for the <aceplay.com> domain name to Plaintiff;

9 C. An award of compensatory, consequential, statutory, and/or punitive damages to
10 Plaintiff in an amount to be determined at trial;

11 D. An award of interest, costs and attorneys' fees incurred by Plaintiff in prosecuting
12 this action; and

13 E. All other relief to which Plaintiff is entitled.

14 Dated: this 20th day of June, 2012

15 | Respectfully submitted,

16 || LEWIS AND ROCA LLP

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